Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Petition of BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules	WC Docket No. 05-342

COMMENTS OF AT&T INC. IN SUPPORT OF BELLSOUTH'S PETITION FOR FORBEARANCE

AT&T Inc. ("AT&T"), on behalf of its affiliates, respectfully submits these comments in support of the petition of BellSouth Telecommunications, Inc. ("BellSouth") for forbearance from enforcement of a number of the Commission's accounting rules.[1]

I. INTRODUCTION

Historically, rates for incumbent local exchange carriers, such as BellSouth and AT&T, were governed by rate-of-return regulation, pursuant to which rates were set according to their costs plus some authorized return on their investment.[2] Because rate-of-return regulation required that rates be based on cost, implementing such regulation required that the Commission prescribe detailed cost assignment rules. Those rules govern the allocation of costs between regulated and non-regulated activities, as well as between jurisdictions and among regulated interstate services.

[1] Specifically, BellSouth requests the Commission to forbear from enforcing its cost allocation rules requiring the classification of activities as "regulated" and "non-regulated" under sections 32.23 and 32.24 and part 64 subpart I; the affiliate transaction rules under section 32.27; the cost allocation manual filing requirements and independent audit obligations under sections 64.903 and 64.904; the rules regarding jurisdictional separations under Part 36; and the interstate cost apportionment rules of Part 69. *See* BellSouth Petition at 1, n.1 & Appendix 1. Collectively, these rules are referred to herein as "cost assignment rules."

[2] For a detailed discussion of pricing regulation, see BellSouth Petition at 10-20.

As BellSouth notes, an overhaul of those rules is long overdue.[3] The Commission has long since replaced rate-of-return regulation with a pure price caps regime, pursuant to which rates are based on prescribed ceilings and floors, not costs. Enforcement of these rules is, therefore, no longer necessary for the protection of consumers or to ensure that rates are just and reasonable and not unreasonably discriminatory. Moreover, because these rules impose significant burdens on carriers, relieving them of these obligations will streamline the introduction of new products and services, reduce costs, and promote the public interest. For these reasons, as BellSouth convincingly demonstrates, the Commission must forbear from enforcing these outdated regulations.

II. DISCUSSION

Forbearance would be consistent with – and required by – the deregulatory thrust of the 1996 Act. As the Commission previously noted, "[t]he goal of the Telecommunications Act of 1996 is to establish a pro-competitive, de-regulatory national policy framework," and the Commission's forbearance obligations play an "integral part" in that framework.[4] Pursuant to section 10 of the Act, the Commission is required to forbear from applying any regulation or statutory provision to a telecommunications carrier if:

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

[3] *See* BellSouth Petition at 1-2.

[4] *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, Memorandum Opinion and Order, 19 FCC Rcd 21496, ¶11 (2004) (internal quotation marks omitted) (quoting Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996)).

> (3) forbearance from applying such provision or regulation is consistent with the public interest.[5]

As discussed below, BellSouth's petition satisfies all three of these requirements.

A. Cost Assignment Rules Are Not Necessary To Ensure Rates Are Just, Reasonable and Nondiscriminatory

Enforcement of the Commission's cost assignment rules is not necessary to ensure that charges are just, reasonable and nondiscriminatory. In its petition, BellSouth discussed at length the differences between the obsolete rate-of-return regime, which gave rise to the rules that are the subject of BellSouth's petition, and price cap regulations that are currently applicable to carriers such as BellSouth and AT&T.[6] While the Commission's cost assignment rules played significant roles in the rate-of-return rate-setting mechanisms of the past, these rules have no applicability to the modern price cap system.

Under price caps, rates are driven by the price cap formula, which incorporates fluctuations in inflation and other non-accounting factors, such as changes in demand. Under this system, the Commission makes little or no use of cost allocations to determine rates, so there is simply no benefit to the requirement of separating out the costs for regulated and nonregulated services. As the Commission explained,

> [r]ather than focusing on costs, price caps regulation focuses primarily on the rates incumbent LECs may charge and the revenues they may generate from interstate access services. By severing the direct link between authorized rates and realized costs, the price cap system was intended to create incentives for LECs to reduce costs and improve productivity, while maintaining affordable rates for consumers through the caps on prices.[7]

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[5] Section 10(a) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 160(a)). *See also Cellular Telecommunications & Internet Association v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003) (Commission is "obligated to forebear" if three-prong test is met).

[6] *See* BellSouth Petition at 10-23.

[7] *Access Charge Reform Price Cap Performance Review for LECs*, Order, 18 FCC Rcd 14976, ¶3 (2003) (footnotes omitted); *see also Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, Report and Order, 6 FCC Rcd 7571, 7596, ¶ 55 (1991) (price caps reduce

BellSouth provides a detailed analysis demonstrating that all of the rules for which it seeks forbearance are no longer relevant under price caps regulation.[8] Because neither the Commission nor the states utilize these rules to set prices, their enforcement is not "necessary" to ensure rates are just, reasonable and nondiscriminatory.

B. Enforcement of the Cost Assignment Rules Is Not Necessary for the Protection of Consumers

Because they are no longer used to ensure just and reasonable rates, the Commission's cost assignment rules do not protect consumers. On the contrary, the continued enforcement of those rules *harms* consumers by needlessly raising the costs of providing local exchange services.

As discussed above, existing price cap rules already prevent carriers from imposing rates that are unjust or unreasonable. Additionally, increased competition from cable providers, wireless carriers, and other providers of competitive local and exchange access services further protects consumers from unjust or unreasonable rate, terms, or conditions of service.[9] In a competitive market, customers can simply go elsewhere to obtain similar services. The Commission's cost assignment rules add no additional protection, certainly none that is remotely

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"the incentive for the BOCs to shift nonregulated costs to regulated services."); *United States v. Western Elec. Co.*, 993 F.2d 1572, 1580 (D.C. Cir.), *cert denied*, 510 U.S. 984 (1993) ("[Price cap regulation] reduces any BOC's ability to shift costs from unregulated to regulated activities, because the increase in costs for the regulated activity does not automatically cause an increase in the legal rate ceiling.").

[8] *See* BellSouth Petition at 20-22. In fact, the Commission has already recognized that the application of some of these rules can lead to arbitrary results due to advances in network technology and carrier's increased usage of IP-based networks. *See Broadband Order* ¶ 134 ("given the changes in network technology from the time when the part 64 cost allocation rules were developed, [efforts to establish cost causality and usage are] likely to lead to arbitrary cost allocation results.").

[9] As the Commission has long understood, "competition is the most effective means of ensuring that the charges, practices, classifications, and regulations...are just and reasonable, and not unjustly or unreasonably discriminatory." *Petition of US West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, Memorandum Opinion and Order, 14 FCC Rcd 16252, ¶31 (1999) ("*Directory Assistance Order*"). *See* BellSouth Petition at 72-75 (discussing increased competition).

necessary. Rather, these rules are simply carry-overs from an obsolete regulatory regime and have long outlived their usefulness.

Enforcement of these outdated rules is not only unnecessary for the protection of consumers, but affirmatively harms consumers. As BellSouth makes clear, compliance with the Commission's cost assignment rules creates an enormous burden on the resources of carriers.[10] AT&T currently employs over 40 full-time employees whose primary job is to ensure compliance with the cost assignment rules. AT&T also requires thousands of other employees to dedicate time to observing the applicable requirements in relation to their day-to-day activities. For example, every month, AT&T takes a sample group of over 2,700 sales employees and technicians to participate in a time-sampling review, which lasts 30 to 60 minutes, to ensure, among other things, that costs associated with those employees' activities are appropriately allocated under the rules. As BellSouth demonstrates, these cost-allocation activities no longer serve any purpose; they require carriers to expend resources for additional planning and analyses, which can hamper their ability to respond quickly to market demand for new and innovative products.[11]

A carrier's infrastructure investments, service offerings and use of resources should be based upon serving the demands of the marketplace, not upon complying with outdated regulatory obligations. The continued enforcement of these rules cannot be justified as necessary to protect the consumer. Existing price cap regulation and competitive forces already provide ample safeguards for the public.

[10] *See e.g.* Bellsouth Petition at 32-39 (discussing day-to-day impact of Commission's cost allocation rules on various activities)

[11] *See id*. at 32-35, 61-62.

C. The Forbearance Requested in Bellsouth's Petition Is Consistent With the Public Interest.

Consistent with the requirements of Section 10(a)(3) of the Act, BellSouth has demonstrated that forbearance from these rules would serve the public interest.[12] Section 10(b) requires the Commission, in making the determination under (a)(3), to "consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."[13]

Removing unnecessary regulatory burdens on carriers makes them more efficient competitors and allows them to dedicate their resources to addressing the needs of the market. Eliminating these burdensome requirements will save costs and make additional resources available to improve service quality and accelerate investment and innovation. These improvements, in turn, will inspire further competition by other competitors.

Indeed, the current cost assignment rules impose on incumbent LECs requirements that cable service providers and wireless carriers do not have, and this distorts the marketplace in a manner that is clearly contrary to the public interest.[14] Carriers that are currently free from these requirements certainly maintain an advantage, gained not from their own efficiencies or market

[12] 47 U.S.C. §160(a)(3).

[13] *Id.* § 160(b) ("If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.")

[14] The Commission has recognized that forbearance is appropriate to make a carrier "a more effective competitor" if enforcement "would pose significant adverse competitive consequences [on the carrier], without positive benefits for consumers." *Directory Assistance Order* ¶ 49.

savvy, but from an artificial regulatory inequality. The Commission's should protect competition, not competitors.[15]

Accordingly, granting BellSouth's petition would further a key public interest goal identified in the Communications Act – "to encourage the provision of new technologies and services to the public."[16] Congress expressed a strong desire to encourage the deployment of advanced services by "removing barriers to infrastructure investment."[17] Congress also sought to encourage broadband deployment "without regard to any transmission media or technology."[18] To that end, granting BellSouth's petition will serve the public interest.

III. CONCLUSION

Regulatory reform of the Commission's accounting rules is long overdue. For the reasons discussed above, BellSouth's petition satisfies the three-prong test required for forbearance, and the Commission should grant the relief sought. Indeed, for the same reasons the Commission should forbear from applying these regulations to BellSouth, it should forbear from applying them to all other price cap LECs.[19]

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[15] *See Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962) (antitrust laws were enacted for "the protection of competition, not competitors..."); *see also SBC Communications Inc. v.* FCC, 56 F.3d 1484, 1492 (D.C. Cir. 1995) (noting commenter's "mistaken belief that the Commission should protect competitors at the expense of consumers").

[16] 47 U.S.C. § 157(a). *See also Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Sixth Memorandum Opinion and Order, 14 FCC Rcd 10840, ¶ 12 (1999) (public interest is served by "permitting the expeditious introduction of new services").

[17] *See* Section 706(b) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996), reproduced in 47 U.S.C. § 157 note.

[18] *Id*.

[19] *See, e.g.*, Memorandum Opinion and Order, *Hyperion Telecommunications, Inc. Petition Requesting Forbearance; Time Warner Communications Petition for Forbearance; Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers*, 12 FCC Rcd 8596 (1997) (granting Hyperion's and Time Warner's forbearance petitions seeking permissive detariffing for the provision of interstate exchange access services and extending the relief to all similarly situated carriers).

Respectfully submitted,

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